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## House of Representatives

The House was not in session today. Its next meeting will be held on Monday, August 9, 2010, at 7 p.m.

## Senate

THURSDAY, AUGUST 5, 2010

The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Our Father in heaven, we give You thanks, for You alone are God, living and true, dwelling in light inaccessible from before time and forever.

Inspire our lawmakers this day to labor for peace and justice, to sacrifice for the needy, and to be faithful stewards of the gifts You have given them. Teach them to do Your will on Earth even as it is done in heaven. Lord, strengthen them to overcome evil with good, as You give them serenity amid the tensions of life.

We pray in Your wonderful Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUE).

The bill clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, August 5, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

DANIEL K. INOUE,  
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. REID. Madam President, following leader remarks, if any, there will be a period of morning business until 11 a.m., with the time equally divided and controlled between the two leaders or their designees.

At 11 a.m., the Senate will resume consideration of the House message on H.R. 1586, which is the legislative vehicle for the FMAP and teacher funding amendment. There will be 20 minutes for debate, equally divided and controlled between Senators BAUCUS and DeMint or their designees.

At approximately 11:20, the Senate will proceed to a series of up to three rollcall votes. Those votes will be in re-

lation to two DeMint motions to suspend the rules and on a motion to concur with respect to H.R. 1586.

Upon disposition of the message on H.R. 1586, the Senate will resume debate on the nomination of Elena Kagan to be a Justice of the Supreme Court of the United States. I will work with the Republican leader, as we did yesterday, to set a time on the vote on the confirmation of the nomination and on other issues to come before the Senate today.

Will the Chair please announce the business of the Senate.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business until 11 a.m., with the time equally divided and controlled between the two leaders or their designees.

Mr. REID. Madam President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KAUFMAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### IN PRAISE OF MICHAEL COPPS

Mr. KAUFMAN. Madam President, I rise once again to honor one of our Nation's great Federal employees.

The Federal employee I am recognizing this week—and this is my 89th since last May, and here they are on the chart—has made a name for himself as an advocate for sensible regulation of the communications industry.

At the Federal Communications Commission, Michael Copps has been a tireless fighter for the public interest and a steadfast campaigner for localism in broadcasting. In his position as one of the five Commissioners appointed by the President and confirmed by the Senate to oversee the regulation of our communications industry, Mike must work with the other Commissioners to come to agreement on key issues affecting broadcasting, the Internet, and other media. Whether they agree with him or not, I know they have to respect and admire his passion and energy in advocating for what he believes to be the best way to serve the American people.

I did not choose to honor Mike only because he is one of the FCC's Commissioners; he has had a distinguished public service career for three decades. His service as Commissioner is just his latest role in the Federal Government. Mike is currently in his second term, having been appointed twice by President George W. Bush.

Before his appointment to the FCC, Mike served at the Department of Commerce as the Assistant Secretary for Trade Development and Deputy Assistant Secretary for Basic Industries.

Prior to his service with the Commerce Department, Mike spent 12 years here in the Senate as chief of staff to former Senator Fritz Hollings of South Carolina. That is how I got to know Mike, when I was chief of staff for now-Vice President and then-Senator JOE BIDEN. I can say from personal experience that, as a chief of staff, Mike was truly first class. He earned the respect and admiration of his colleagues across the Senate on both sides of the aisle. Smart, exercising good judgment, and a very good listener, Mike embodied the skills and values that make someone a great chief of staff.

Before coming to Washington in 1970, he spent time working in the private sector for a Fortune 500 company, and he also taught as a history professor for some years at Loyola University of the South, in New Orleans. He holds a bachelor's degree from Wofford College in South Carolina and a Ph.D. from the University of North Carolina at Chapel Hill.

In his current role, Mike has been an untiring advocate for the public and has worked to push the FCC back toward its core mission: enforcing the regulations that maintain fair com-

petition, protecting consumers, and ensuring that the communications industry serves the public interest. Particularly, he has been a crusader against control of the Internet by big corporations. His promotion of an open Internet is based on his belief that communications media should benefit all and foster the growth and development of communities.

Last week, I spoke from this desk about the dangers of regulatory capture. Over the past decade, many of our regulatory agencies have been caught up in a deregulatory mindset that viewed self-regulation as not only adequate but preferable. Michael Copps has long been a voice of reason against regulatory capture.

He is just one example of the many outstanding men and women at the Federal Communications Commission. They are all truly great Federal employees, and I hope my colleagues will join me in honoring their service to our Nation.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KAUFMAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KAUFMAN. Madam President, I ask that the time of the quorum call be equally divided.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KAUFMAN. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JOHANNIS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### NOMINATION OF ELENA KAGAN

Mr. JOHANNIS. Madam President, a Senator has an enormous duty when it comes to evaluating a Supreme Court nominee. The duty demands that Senators examine whether the person nominated to the highest Court in the land will uphold and defend the principles contained in the Constitution, refrain from judicial activism, and respect the rule of law.

Some have characterized this duty as one of the most important and far-reaching decisions that a Senator will make, and it is one of the most important decisions in their entire time in the Senate.

As the nomination process for Ms. Kagan began, I went into it with an open mind and a steadfast resolve to

evaluate the nominee's qualifications without looking through a partisan lens. In fact, having gone through the confirmation process myself before being sworn in as Secretary of Agriculture, I know what an important process this is.

Senators have a strong duty to take it seriously. Considering Supreme Court judgeships are lifetime appointments, these nominations require even closer scrutiny. Thus, Senators must carefully review any Supreme Court nominee's record and their judicial philosophy.

After this careful review and closely monitoring the hearings before the Judiciary Committee, I came to the conclusion that I could not support this nomination.

The Court is not a place to create laws, and I was not convinced that Ms. Kagan understands this fundamental premise. Additionally, her long career as a political adviser and academic insufficiently prepares her for a lifetime appointment to the country's highest Court.

For example, prior to her position as Solicitor General, Ms. Kagan had never taken a case to trial. I find that remarkable. Since her time as Solicitor General, Ms. Kagan has only argued six cases before the Supreme Court.

Beyond that lack of experience, there are several other areas that concern me about this nomination. Ms. Kagan's view of the second amendment is disturbing to me. As a law clerk for U.S. Supreme Court Justice Thurgood Marshall, she wrote that she was "not sympathetic"—"not sympathetic"—to the legal assertion that the DC gun ban violated citizens' constitutional right to bear arms.

Probably the most recent glimpse into Ms. Kagan's view of the second amendment is her failure to file a brief on behalf of the petitioner in the McDonald case regarding Chicago gun bans. The Supreme Court had already been clear on the DC gun ban, and Chicago's law clearly impacted a variety of Federal laws and programs.

Yet, as Solicitor General, she chose to sit quietly, tacitly casting aside a very important constitutional protection. Her not filing demonstrated the government's lack of interest or concern in protecting this important constitutional right.

Ms. Kagan's lack of action is viewed by many as a bias against the second amendment, as if she were picking and choosing which constitutional provisions she liked. Judges cannot selectively disregard the Constitution when it is convenient or in line with their point of view. So Ms. Kagan's record in this area is enormously troubling for someone who wants to sit on the Supreme Court.

Another very serious concern is her actions as an adviser to President Clinton were instrumental in keeping partial-birth abortion legal in the 1990s. During her time in the White House, the American College of Obstetricians